United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, Steamfitters Local 420, AFL–CIO (Carrier Corporation and H.T. Lyons, Inc.) *and* Kip Traffican *and* John C. Csekitz. Cases 4–CB–9413 and 4–CB–9421

July 17, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND KIRSANOW

On April 27, 2006, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, Steamfitters Local 420, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

Dated, Washington, D.C. July 17, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The judge inadvertently included language for Respondent employers in the introductory portion of his recommended Order. We have substituted our standard Board language for Respondent unions.

Andrew Brenner, Esq., for the General Counsel.
Stephen J. Holroyd, Esq., of Philadelphia, Pennsylvania, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed by Kip Traffican and John C. Csekitz on February 23 and March 2, 2005, respectively, the Regional Director for Region 4 of the National Labor Relations Board (the Board), issued a consolidated complaint on June 28, 2005, alleging that United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, Steamfitters Local 420, AFL–CIO (Respondent), had committed certain violations of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Philadelphia, Pennsylvania, on October 4, 2005, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the parties have been given due consideration. Upon the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Carrier Corporation (Carrier), a Delaware corporation with a facility in Plymouth Meeting, Pennsylvania, has been engaged in installing and servicing HVAC equipment. During the year preceding October 4, 2005, in the course and conduct of its business operations, Carrier provided services valued in excess of $50,000 outside the Commonwealth of Pennsylvania. The parties have stipulated, and I find, that at all times material, Carrier was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all times material, H.T. Lyons, Inc. (Lyons), a Pennsylvania corporation, with offices in Allentown and Scranton, Pennsylvania, has been engaged in performing sheet metal, plumbing, and pipefitting services. During the year preceding October 4, 2005, in the course and conduct of its business operations, Lyons performed services valued in excess of $50,000 outside the Commonwealth of Pennsylvania. The parties have stipulated, and I find, that at all times material, Lyons was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that at all times material, the Respondent was a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing or attempting to cause Carrier and Lyons to refuse to hire Kip Traffican and John Csekitz, respectively, because they were members of Local 420 who had gone to work for Merck, an employer that did not have a collective-bargaining agreement with the Union.

A. Kip Traffican

Kip Traffican has been a member of the Respondent since 1978. He went through its apprenticeship program and had continued to pay his union dues up to the date of the hearing. He worked for Carrier for about 10 years before leaving its employ in the mid-1980s. For about the last 3 years, he has worked in the utilities department at Merck Pharmaceutical (Merck). He is also a member of PACE International Union, AFL–CIO (PACE) which represents him in his position at Merck.

Merck does not have a collective-bargaining agreement with the Respondent and, in November 2004, Business Agent Daniel Hill filed internal union charges against Traffican alleging that Traffican had violated the Respondent's rules and its International Union's constitution by working in the HVAC department "for Merck, a non-signatory firm." Traffican was found guilty by the Respondent's Executive Board, which fined him $5000, expelled him from the Union, and imposed a $5000 fee for reinstatement. That decision is on appeal to the International Union.

Carrier has a collective-bargaining agreement with the Respondent. Their longstanding practice involves "open solicitation," whereby the employer can hire a member in good standing without going through the Union. In January 2005, Traffican learned that Carrier had an opening for an absorber mechanic. He contacted Carrier Service Manager Thomas Jones and expressed his interest in the absorber mechanic position. Jones said that he was interested in hiring Traffican and arranged for him to come in for an interview. When Traffican arrived at the interview, Jones told him that he would hire him right then but that he had talked to Daniel Hill and the Union would not let him hire Traffican. Traffican asked who Hill was to stop Jones from hiring him. Jones responded that Hill would make his life miserable and that it was not worth the aggravation he would have if he hired Traffican. Since that time, Traffican has not been hired by Carrier.

Jones testified that Carrier had need of an absorber mechanic in the latter part of 2004 and that he had talked to Hill about finding someone to fill the position. Two or 3 months later, after Traffican had been in contact and indicated his interest in filling that position, Jones contacted Hill by telephone, went over his need for an absorber mechanic, and told him that he was considering hiring Traffican. Hill responded, "no fucking way." Their conversation ended with Hill saying he would continue to look for someone to fill the absorber mechanic position.

Jones decided not to hire Traffican because of Hill's response. Jones has been a member of the Respondent since 1980. He said that he was aware of the fact that there were "issues" between Local 420 and the members who had gone to work for Merck and that Local 420 had filed charges against them. It was because of this that he contacted Hill before hiring Traffican even though under "open solicitation" he was not required to do so and he has hired others in the past without seeking Hill's approval, although he has informed Hill of the new hire "out of professional courtesy." In this case, he contacted Hill because he "knew what was going on" between the Union and the members who had gone to work for Merck. He testified that he "chose not to pursue hiring Kip Traffican out of respect for working with the Local. Their [sic] viewpoint was not to hire him and I went along with that." Jones said that he tries to maintain the best working relationship possible between Carrier and Local 420 and he felt that hiring Traffican after Hill's comment "would certainly tarnish that relationship."

Analysis and Conclusions

A union violates Section 8(b)(1)(A) of the Act when it discriminates against members in retaliation for their protected activities. E.g., *Newspaper & Mail Deliverers (City & Suburban Delivery)*, 332 NLRB 870 fn. 1 (2000); *Teamsters Local 705 (Pennsylvania Truck Lines)*, 314 NLRB 95 fn. 4 (1994); *Carpenters Local 626 (Strawbridge & Clothier)*, 310 NLRB 500 fn. 2 (1993). A union violates Section 8(b)(2) when it causes or attempts to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act. It need not threaten or coerce the employer into not hiring the individual, so long as the employer accedes to its request. *Laborers Local 334 (Kvaerner Songer)*, 335 NLRB 597, 600 (2001).

In the present case, the evidence establishes that Hill, an admitted agent of the Respondent, refused to permit Carrier to hire Traffican, a member of Local 420, because he had engaged in protected activity by going to work for Merck, a nonsignatory employer. In his testimony, Hill admitted to having a conversation with Jones about Carrier's need for an absorber mechanic in which Jones mentioned the possibility of hiring someone who was working at Merck. According to Hill, Jones raised this possibility and told Hill not to "get mad at him" because if it. Hill said he responded that he did not know what Jones meant, that there was open solicitation, and told Jones "you can do whatever you want to do." Hill said he could not recall if anyone's name was mentioned in the conversation and denied telling Jones that he could not hire individuals who were working at Merck. Hill did recall telling Jones at the end of the conversation that he would continue to look for an absorber mechanic for Carrier. I credit the testimony of Jones concerning the conversation and find that when Jones raised the possibility of hiring Traffican, Hill said "no fucking way" and that this clearly conveyed to Jones that Hill did not want him to hire Traffican. Under the circumstances, there is simply no reason to credit Hill rather than Jones. Given that Jones was willing to refrain from hiring an absorber mechanic he sorely needed rather than incur the Respondent's displeasure, it is unlikely that he would fabricate such a comment by Hill if he had not said it. It is even more unlikely that Jones would forego hiring an absorber mechanic he sorely needed if Hill not only had expressed no reservations about his doing so but also reminded Jones that there was open solicitation and he could do whatever he wanted.

The Respondent contends that the evidence does not establish that it requested that Carrier not hire Traffican. I do not agree. The prohibitions in Section 8(b)(1)(A) and (2) of the Act would have little meaning if they only applied to directly stated demands to discriminate. The cases cited by the Respondent in which no violations were found involve situations where there was no evidence of action by the union and the employer acted out of a general concern that it might have trouble with the union if an employee was hired or retained or because of its perception that to not hire the individual might please the union. That is not the case here. Jones contacted the Union's agent, Hill, who responded to Jones' inquiry about hiring Traffican by saying "no fucking way." I find this amounts to an unambiguous request on the part of the Respondent that Carrier not hire Traffican, a request to which the employer acceded. It was clearly the only reason that the employer failed to fill its pressing need for a qualified absorber mechanic by hiring Traffican. By the end of his conversation with Jones, Hill was aware that Traffican was not going to be hired because he told Jones he would continue to try and find a qualified absorber mechanic, which Hill acknowledged is a "rarity." In this conversation with Jones, Hill made it clear that he did not want Carrier to hire Traffican and understood that it was not going to do so.

Based on these facts, I find that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing Carrier to not hire Traffican.

B. John Csekitz

John Csekitz has been a member of the Respondent since 1988. He went through its apprenticeship program and as of the date of the hearing was a member in good standing. Since June 2002, he has worked as a utilities mechanic at Merck. He is also a member of PACE which represents him at Merck. He had previously worked for Lyons for at least 10 years and after leaving its employ had continued to do consulting work for it.

Mark Weidner is employed by Lyons as a special projects team manager and his duties include hiring employees. Lyons has a collective-bargaining agreement with the Respondent which covers employees on Weidner's team and he is a member of Local 420. Weidner testified that he knew Csekitz from his employment at Lyons and that in January 2005 he had a conversation with Csekitz who had come into Weidner's office to make some copies of prints for the house he was building. During the course of their conversation, Weidner asked Csekitz if he would be interested in a control sales job and they discussed the type of job that Weidner had in mind. Csekitz said that he was somewhat interested but that was already employed at the time. Weidner testified that when he talked to Csekitz about working for Lyons the position they discussed was not available to be filled as it did not actually exist. The proposed position would involve sales of retrofit controls an area in which Lyons was considering entering in order to expand its business. Before the position could have been filled, Weidner would have had to write a job description and make a formal offer. He did not take any steps to create the position after discussing it with Csekitz who told Weidner he would consider it, but never got back to him to say he would take it.

Weidner also testified that at some point he had a conversation with Frank Bellosi, who is an organizer with the Respondent, about the possibility of Lyons' hiring some individuals who were working at Merck, including Csekitz. He said that he talks to Bellosi regularly and he could not say with certainty whether this conversation was before or after he spoke with Csekitz about possible employment with Lyons. Bellosi requested that Weidner wait until after the Union's executive board meeting before hiring anyone who was working at Merck. Weidner responded "that would be fine." According to Weidner, this meeting had been scheduled in order for the members working at Merck, "to confirm that they're in good standing with Local 420." Bellosi did not tell Weidner that he could not hire Csekitz and did not ask him not to do so.

Csekitz testified that in January 2005, he had a telephone conversation with Weidner who told him about an opportunity for employment at Lyons and asked if he was interested. Csekitz said that he was interested but said that Weidner had better check with Local 420 as he thought it might object. Weidner said that he would get back to Csekitz. About a week later, Csekitz had another telephone conversation with Weidner and asked if he had spoken to the Union. Weidner responded that the Union did have some issues with hiring Csekitz at that time. Csekitz said that the conversation he had with Weidner while in his office making prints for his house took place in March 2005 and that Wayne Hoke was also present. Weidner mentioned a job opportunity that was "custom-tailored" to Csekitz's skills. He explained what was involved and asked if Csekitz was interested. When Csekitz indicated that he was interested, there was a discussion about Bellosi's wanting Lyons to wait until Csekitz met with the executive board of the Union. This confused and upset Csekitz because no charges had been brought against him by the Union. They then had a general discussion about what was going on with the Union. Csekitz was not contacted again about employment with Lyons. The Union later filed charges against Csekitz for working at Merck, a nonsignatory employer and a trial was held. Csekitz was found guilty of the charges, fined $5000, expelled from the Union, and assessed a $5000 reinitiation fee.

Analysis and Conclusions

The issue in the case of Csekitz is whether Bellosi's action in asking Weidner to wait until Csekitz appeared before Local 420's executive board before hiring Csekitz constituted discrimination against him and violated the Act.[1] I find that it did not.

I find the testimony of Weidner about his discussion with Csekitz concerning the possibility of employment with Lyons in 2005, which he placed in January not March as did Csekitz, to be the most credible.[2] I find that the credible evidence estab-

[1] I find, based on the credible and consistent testimony of Weidner and Bellosi, that they did have a conversation in which the subject of Lyons' hiring Local 420 members who had gone to work for Merck, including Csekitz, was discussed and that Bellosi asked Weidner not to do so until after an upcoming meeting of the Union's executive board dealing with the standing of such members with the Union was held.

[2] I do not credit the testimony of Wayne Hoke about the conversation in Weidner's office in which he said that Weidner, in effect, told

lishes that Weidner and Csekitz had a conversation in which Weidner inquired whether Csekitz had an interest in a position that Lyons was considering creating. While Csekitz, who at the time was a full-time employee at Merck, expressed some interest, he did not tell Weidner that he wanted the position or take any action to apply for it. As a result Weidner took no action to create the position, which would not have been a part of the bargaining unit represented by Local 420, and did not actually offer it to Csekitz or to anyone else. I find that the evidence fails to establish that Bellosi attempted to cause Lyons not to hire Csekitz or that it did not do so because Bellosi asked Weidner to wait until Csekitz appeared before the Union's executive board. The evidence is unclear when Bellosi and Weidner had their discussion about the possibility of hiring members of Local 420. According to the testimony of Weidner, it may well have been before he even talked to Csekitz about the possibility of employment. If so, and Weidner felt that he could not hire Csekitz, there would have been no reason to even discuss the position with him. I do not credit Csekitz's testimony that he first talked to Weidner about employment with Lyons in a telephone call in January in which Csekitz allegedly suggested that Weidner contact the Union to see if it objected to hiring him. Csekitz had continued to work for Lyons on a part-time basis, up to 200 hours per year, after leaving its full-time employ and going to work at Merck, apparently, without any objections by the Union. I find it more likely that Weidner told Csekitz about his conversation with Bellosi when he talked to Csekitz in his office about the possibility of coming to work for Lyons.

Lyons' failure to hire Csekitz did not result from its acceding to the Union's request but from Csekitz's failure to follow up on his discussion with Weidner and Weidner's failure to take action to create the new position because Csekitz did not pursue it. Under these circumstances, to hold that there was a causal connection between Bellosi's conversation with Weidner and the fact Csekitz was not hired for a job that did not actually exist would be pure speculation. I shall recommend that the allegations concerning Csekitz be dismissed.

CONCLUSION OF LAW

By causing or attempting to cause Carrier Corporation, an employer within the meaning of the Act, not to hire Kip Traffican because he had engaged in protected activity, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent be ordered to notify Carrier Corporation that it has no objection to its hiring Kip Traffican and that the Respondent make Kip Traffican whole for any loss of earnings and other benefits, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, Steamfitters Local 420, AFL–CIO, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Causing or attempting to cause Carrier Corporation or any other employer to refuse to hire or otherwise discriminate against Kip Traffican or any other employee because they have engaged in activity protected by the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order notify Carrier Corporation that it has no objection to the hiring of Kip Traffican.

(b) Make Kip Traffican whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days after service by the Region, post at its union office in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Carrier Corporation, if willing, at all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Csekitz Lyons was not allowed to hire him because of the Union. Hoke appeared to have no present recollection of what was said or by whom during the conversation and was giving his impression of what occurred rather than recounting what was actually said. Hoke placed the conversation in January 2005.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 27, 2006

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT cause or attempt to cause Carrier Corporation or any other employer to refuse to hire or otherwise discriminate against Kip Traffican or any other employee because they have engaged in activity protected by the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of this Order notify Carrier Corporation that we have no objection to the hiring of Kip Traffican.

WE WILL make Kip Traffican whole for any loss of earnings and other benefits suffered a result of the discrimination against him, plus interest.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE U.S. AND CANADA, STEAMFITTERS LOCAL 420, AFL–CIO